

A NONSUBSTANTIVE REVISION
OF STATUTES RELATING TO
SOLVENCY OF INSURERS, PROPERTY AND CASUALTY
INSURANCE, OTHER TYPES OF INSURANCE COVERAGE,
AND UTILIZATION REVIEW AND INDEPENDENT REVIEW

Submitted to the 79th Legislature
as part of the
Texas Legislative Council's
Statutory Revision Program

Austin, Texas

2005

1 APPENDIX B

2 CHAPTER 311. CODE CONSTRUCTION ACT

3 (current as of end of 79th Legislature, 2nd Called Session, 2005)

4 SUBCHAPTER A. GENERAL PROVISIONS

5 Sec. 311.001. SHORT TITLE. This chapter may be cited as
6 the Code Construction Act.

7 Sec. 311.002. APPLICATION. This chapter applies to:

8 (1) each code enacted by the 60th or a subsequent
9 legislature as part of the state's continuing statutory revision
10 program;

11 (2) each amendment, repeal, revision, and reenactment
12 of a code or code provision by the 60th or a subsequent legislature;

13 (3) each repeal of a statute by a code; and

14 (4) each rule adopted under a code.

15 Sec. 311.003. RULES NOT EXCLUSIVE. The rules provided in
16 this chapter are not exclusive but are meant to describe and clarify
17 common situations in order to guide the preparation and
18 construction of codes.

19 Sec. 311.004. CITATION OF CODES. A code may be cited by its
20 name preceded by the specific part concerned. Examples of
21 citations are:

22 (1) Title 1, Business & Commerce Code;

23 (2) Chapter 5, Business & Commerce Code;

24 (3) Section 9.304, Business & Commerce Code;

25 (4) Section 15.06(a), Business & Commerce Code; and

26 (5) Section 17.18(b)(1)(B)(ii), Business & Commerce
27 Code.

28 Sec. 311.005. GENERAL DEFINITIONS. The following
29 definitions apply unless the statute or context in which the word or
30 phrase is used requires a different definition:

31 (1) "Oath" includes affirmation.

32 (2) "Person" includes corporation, organization,
33 government or governmental subdivision or agency, business trust,
34 estate, trust, partnership, association, and any other legal

1 entity.

2 (3) "Population" means the population shown by the
3 most recent federal decennial census.

4 (4) "Property" means real and personal property.

5 (5) "Rule" includes regulation.

6 (6) "Signed" includes any symbol executed or adopted
7 by a person with present intention to authenticate a writing.

8 (7) "State," when referring to a part of the United
9 States, includes any state, district, commonwealth, territory, and
10 insular possession of the United States and any area subject to the
11 legislative authority of the United States of America.

12 (8) "Swear" includes affirm.

13 (9) "United States" includes a department, bureau, or
14 other agency of the United States of America.

15 (10) "Week" means seven consecutive days.

16 (11) "Written" includes any representation of words,
17 letters, symbols, or figures.

18 (12) "Year" means 12 consecutive months.

19 (13) "Includes" and "including" are terms of
20 enlargement and not of limitation or exclusive enumeration, and use
21 of the terms does not create a presumption that components not
22 expressed are excluded.

23 Sec. 311.006. INTERNAL REFERENCES. In a code:

24 (1) a reference to a title, chapter, or section
25 without further identification is a reference to a title, chapter,
26 or section of the code; and

27 (2) a reference to a subtitle, subchapter, subsection,
28 subdivision, paragraph, or other numbered or lettered unit without
29 further identification is a reference to a unit of the next larger
30 unit of the code in which the reference appears.

31 SUBCHAPTER B. CONSTRUCTION OF WORDS AND PHRASES

32 Sec. 311.011. COMMON AND TECHNICAL USAGE OF WORDS. (a)
33 Words and phrases shall be read in context and construed according
34 to the rules of grammar and common usage.

1 (b) Words and phrases that have acquired a technical or
2 particular meaning, whether by legislative definition or
3 otherwise, shall be construed accordingly.

4 Sec. 311.012. TENSE, NUMBER, AND GENDER. (a) Words in the
5 present tense include the future tense.

6 (b) The singular includes the plural and the plural includes
7 the singular.

8 (c) Words of one gender include the other genders.

9 Sec. 311.013. AUTHORITY AND QUORUM OF PUBLIC BODY. (a) A
10 grant of authority to three or more persons as a public body confers
11 the authority on a majority of the number of members fixed by
12 statute.

13 (b) A quorum of a public body is a majority of the number of
14 members fixed by statute.

15 Sec. 311.014. COMPUTATION OF TIME. (a) In computing a
16 period of days, the first day is excluded and the last day is
17 included.

18 (b) If the last day of any period is a Saturday, Sunday, or
19 legal holiday, the period is extended to include the next day that
20 is not a Saturday, Sunday, or legal holiday.

21 (c) If a number of months is to be computed by counting the
22 months from a particular day, the period ends on the same numerical
23 day in the concluding month as the day of the month from which the
24 computation is begun, unless there are not that many days in the
25 concluding month, in which case the period ends on the last day of
26 that month.

27 Sec. 311.015. REFERENCE TO A SERIES. If a statute refers
28 to a series of numbers or letters, the first and last numbers or
29 letters are included.

30 Sec. 311.016. "MAY," "SHALL," "MUST," ETC. The following
31 constructions apply unless the context in which the word or phrase
32 appears necessarily requires a different construction or unless a
33 different construction is expressly provided by statute:

34 (1) "May" creates discretionary authority or grants

1 permission or a power.

2 (2) "Shall" imposes a duty.

3 (3) "Must" creates or recognizes a condition
4 precedent.

5 (4) "Is entitled to" creates or recognizes a right.

6 (5) "May not" imposes a prohibition and is synonymous
7 with "shall not."

8 (6) "Is not entitled to" negates a right.

9 (7) "Is not required to" negates a duty or condition
10 precedent.

11 SUBCHAPTER C. CONSTRUCTION OF STATUTES

12 Sec. 311.021. INTENTION IN ENACTMENT OF STATUTES. In
13 enacting a statute, it is presumed that:

14 (1) compliance with the constitutions of this state
15 and the United States is intended;

16 (2) the entire statute is intended to be effective;

17 (3) a just and reasonable result is intended;

18 (4) a result feasible of execution is intended; and

19 (5) public interest is favored over any private
20 interest.

21 Sec. 311.022. PROSPECTIVE OPERATION OF STATUTES. A
22 statute is presumed to be prospective in its operation unless
23 expressly made retrospective.

24 Sec. 311.023. STATUTE CONSTRUCTION AIDS. In construing a
25 statute, whether or not the statute is considered ambiguous on its
26 face, a court may consider among other matters the:

27 (1) object sought to be attained;

28 (2) circumstances under which the statute was enacted;

29 (3) legislative history;

30 (4) common law or former statutory provisions,
31 including laws on the same or similar subjects;

32 (5) consequences of a particular construction;

33 (6) administrative construction of the statute; and

34 (7) title (caption), preamble, and emergency

1 provision.

2 Sec. 311.024. HEADINGS. The heading of a title, subtitle,
3 chapter, subchapter, or section does not limit or expand the
4 meaning of a statute.

5 Sec. 311.025. IRRECONCILABLE STATUTES AND AMENDMENTS. (a)
6 Except as provided by Section 311.031(d), if statutes enacted at
7 the same or different sessions of the legislature are
8 irreconcilable, the statute latest in date of enactment prevails.

9 (b) Except as provided by Section 311.031(d), if amendments
10 to the same statute are enacted at the same session of the
11 legislature, one amendment without reference to another, the
12 amendments shall be harmonized, if possible, so that effect may be
13 given to each. If the amendments are irreconcilable, the latest in
14 date of enactment prevails.

15 (c) In determining whether amendments are irreconcilable,
16 text that is reenacted because of the requirement of Article III,
17 Section 36, of the Texas Constitution is not considered to be
18 irreconcilable with additions or omissions in the same text made by
19 another amendment. Unless clearly indicated to the contrary, an
20 amendment that reenacts text in compliance with that constitutional
21 requirement does not indicate legislative intent that the reenacted
22 text prevail over changes in the same text made by another
23 amendment, regardless of the relative dates of enactment.

24 (d) In this section, the date of enactment is the date on
25 which the last legislative vote is taken on the bill enacting the
26 statute.

27 (e) If the journals or other legislative records fail to
28 disclose which of two or more bills in conflict is latest in date of
29 enactment, the date of enactment of the respective bills is
30 considered to be, in order of priority:

31 (1) the date on which the last presiding officer
32 signed the bill;

33 (2) the date on which the governor signed the bill; or

34 (3) the date on which the bill became law by operation

1 of law.

2 Sec. 311.026. SPECIAL OR LOCAL PROVISION PREVAILS OVER
3 GENERAL. (a) If a general provision conflicts with a special or
4 local provision, the provisions shall be construed, if possible, so
5 that effect is given to both.

6 (b) If the conflict between the general provision and the
7 special or local provision is irreconcilable, the special or local
8 provision prevails as an exception to the general provision, unless
9 the general provision is the later enactment and the manifest
10 intent is that the general provision prevail.

11 Sec. 311.027. STATUTORY REFERENCES. Unless expressly
12 provided otherwise, a reference to any portion of a statute or rule
13 applies to all reenactments, revisions, or amendments of the
14 statute or rule.

15 Sec. 311.028. UNIFORM CONSTRUCTION OF UNIFORM ACTS. A
16 uniform act included in a code shall be construed to effect its
17 general purpose to make uniform the law of those states that enact
18 it.

19 Sec. 311.029. ENROLLED BILL CONTROLS. If the language of
20 the enrolled bill version of a statute conflicts with the language
21 of any subsequent printing or reprinting of the statute, the
22 language of the enrolled bill version controls.

23 Sec. 311.030. REPEAL OF REPEALING STATUTE. The repeal of a
24 repealing statute does not revive the statute originally repealed
25 nor impair the effect of any saving provision in it.

26 Sec. 311.031. SAVING PROVISIONS. (a) Except as provided
27 by Subsection (b), the reenactment, revision, amendment, or repeal
28 of a statute does not affect:

29 (1) the prior operation of the statute or any prior
30 action taken under it;

31 (2) any validation, cure, right, privilege,
32 obligation, or liability previously acquired, accrued, accorded,
33 or incurred under it;

34 (3) any violation of the statute or any penalty,

1 forfeiture, or punishment incurred under the statute before its
2 amendment or repeal; or

3 (4) any investigation, proceeding, or remedy
4 concerning any privilege, obligation, liability, penalty,
5 forfeiture, or punishment; and the investigation, proceeding, or
6 remedy may be instituted, continued, or enforced, and the penalty,
7 forfeiture, or punishment imposed, as if the statute had not been
8 repealed or amended.

9 (b) If the penalty, forfeiture, or punishment for any
10 offense is reduced by a reenactment, revision, or amendment of a
11 statute, the penalty, forfeiture, or punishment, if not already
12 imposed, shall be imposed according to the statute as amended.

13 (c) The repeal of a statute by a code does not affect an
14 amendment, revision, or reenactment of the statute by the same
15 legislature that enacted the code. The amendment, revision, or
16 reenactment is preserved and given effect as part of the code
17 provision that revised the statute so amended, revised, or
18 reenacted.

19 (d) If any provision of a code conflicts with a statute
20 enacted by the same legislature that enacted the code, the statute
21 controls.

22 Sec. 311.032. SEVERABILITY OF STATUTES. (a) If any
23 statute contains a provision for severability, that provision
24 prevails in interpreting that statute.

25 (b) If any statute contains a provision for
26 nonseverability, that provision prevails in interpreting that
27 statute.

28 (c) In a statute that does not contain a provision for
29 severability or nonseverability, if any provision of the statute or
30 its application to any person or circumstance is held invalid, the
31 invalidity does not affect other provisions or applications of the
32 statute that can be given effect without the invalid provision or
33 application, and to this end the provisions of the statute are
34 severable.

1 Sec. 311.034. WAIVER OF SOVEREIGN IMMUNITY. In order to
2 preserve the legislature's interest in managing state fiscal
3 matters through the appropriations process, a statute shall not be
4 construed as a waiver of sovereign immunity unless the waiver is
5 effected by clear and unambiguous language. In a statute, the use
6 of "person," as defined by Section 311.005 to include governmental
7 entities, does not indicate legislative intent to waive sovereign
8 immunity unless the context of the statute indicates no other
9 reasonable construction. Statutory prerequisites to a suit,
10 including the provision of notice, are jurisdictional requirements
11 in all suits against a governmental entity.